



# General Terms and Conditions for Assembly, Repair and General Services

- of **MULTIVAC Sepp Haggenmüller SE & Co. KG**
- of **MULTIVAC Deutschland GmbH & Co. KG**
- as well as of the companies affiliated with **MULTIVAC Sepp Haggenmüller SE & Co. KG in Germany („MULTIVAC“)**

Valid as of August 2022

## 1. General Provisions

The following terms and conditions regulate the provision of assembly, repair and general services (hereinafter referred to as "Services") by MULTIVAC to merchants within the meaning of §§ 1 ff. HGB (German Commercial Code), also for future contracts. MULTIVAC's Services and offers are exclusively based on these general terms and conditions. These general terms and conditions are deemed to be accepted at the latest with the acceptance of MULTIVAC's Services by the customer.

Conflicting general terms and conditions of the customer shall not apply.

Agreements deviating from the following terms and conditions prior to or upon conclusion of the contract require MULTIVAC's written confirmation to be effective.

## 2. Performance Period

Agreements on the duration of performance and/or the commencement of performance are regarded as approximate.

All temporary obstacles to performance caused by force majeure release MULTIVAC from the assumed performance obligation for the duration of their existence, in particular from the timely dispatch of technicians and the provision of sufficient technicians. This also applies if there are other unforeseeable obstacles to performance for which MULTIVAC is not responsible, in particular in the case of fire, floods, industrial action or official measures. The customer shall bear his own costs incurred by the delay.

The performance deadline shall be deemed to have been met if the performance is ready for acceptance by the customer by the time it expires.

If the Services have been lost or deteriorated before acceptance through no fault of MULTIVAC, MULTIVAC is entitled to demand the agreed price for the Services less its expenses saved, provided that the good is within the control of the customer. The same applies in the event of impossibility of performance through no fault of MULTIVAC. The customer can demand a repetition of the Services if and insofar as this is reasonable for MULTIVAC, in particular taking into account its other contractual obligations. For the repetition, a renewed remuneration is to be paid to MULTIVAC on the basis of the contract prices.

The request for a technician shall be made at least 10 working days before the start of performance.

## 3. Price of Performance, Payment, Retention of Title

The working time for the service shall be invoiced according to expenditure, unless a lump sum price has been expressly agreed.

The agreed amounts do not include VAT, which is to be paid additionally to MULTIVAC at the statutory rate.

Services are invoiced at MULTIVAC's discretion, usually after they have been rendered. All payments of the customer are to be made in Euro.

Invoices from MULTIVAC are due immediately and payable net (without deductions) within 14 days of the invoice date. For each reminder - except for the first reminder justifying default - the customer shall be charged Euro 5.00, unless the customer proves that no damage has occurred at all or that the damage is considerably lower than the flat rate. We reserve the right to assert further claims for damages.

The deduction of a discount requires a special written agreement.

Cheques shall only be credited subject to the correct receipt of the full amount. Costs shall be borne by the customer. No guarantee is assumed for presentation (*Vorlage*).

The date of receipt of payment shall be the date on which the amount is credited. The risk of the payment method shall be borne by the principal.

The customer is only entitled to exercise a set-off or retain payments if his counterclaim results from other legal relationships or is undisputed or legally established by MULTIVAC.

Payments can only be made with debt-discharging effect to the account specified by MULTIVAC in the invoice. MULTIVAC's employees or representatives do not have power of collection.

All parts used by MULTIVAC within the scope of executing Services for the benefit of third-party property, buildings or land remain the property of MULTIVAC until full payment of the service price, unless they have become an integral part of third-party property, buildings or land.

#### **4. Working Time And Compensation**

The personnel employed by MULTIVAC to provide the Services ("Personnel") shall adapt as far as possible to the working hours introduced at the customer.

The customer has to certify the working time and the work performance of the Personnel on the service report submitted to him.

The necessary travelling time (incl. travel time to and from the place of work) shall be charged as working time. Waiting time at the Client's premises shall also be charged as working time, as well as if the Personnel is prevented from working the full working time at the Client's premises through no fault of their own.

For overtime as well as work on Sundays and public holidays, the rates for Services of MULTIVAC valid at the time of performance apply.

#### **5. Travel expenses**

The travel expenses of the Personnel (including the costs of transport and transport insurance of the personal luggage as well as the tools carried and dispatched) are invoiced according to MULTIVAC's expenses, rental cars according to receipt, flight costs according to expenditure.

#### **6. Cooperation of the customer**

The Client has to support the Personnel in the performance of the Services at its own expense.

He must take the special measures necessary for the protection of persons (in particular his own employees) and property at the place of use and is responsible for compliance with the statutory regulations on occupational health and safety (including ArbSchG [Occupational Health and Safety Act], ArbStättV [Workplace Ordinance], DGUV Regulation 1 [Principles of Prevention]) if and insofar as the Personnel are on his premises for the intended purpose. He will also inform the Personnel about existing special safety regulations, insofar as these are of importance to the Personnel. He shall notify MULTIVAC of any breaches of such safety regulations by the Personnel.

MULTIVAC reserves the right to suspend work until the above mentioned requirements have been met. Any additional costs arising from this shall be borne by the customer.

#### **7. Technical Assistance by the Customer**

The customer is obliged to provide technical assistance at its own expense, in particular, and depending on the circumstances, to:

a) provide the necessary and suitable auxiliary staff (locksmiths and other skilled workers, manual workers) in the number and for the time required for the Services; the auxiliary staff must follow the instructions of the head of operations. MULTIVAC does not assume any liability for the auxiliary staff. If a defect or damage is caused by the auxiliary staff due to instructions of the head of operations, No. 9 and 10 apply accordingly.

b) Provision of the necessary devices and heavy tools (e.g. hoists, compressors, vacuum equipment) as well as the necessary commodities and materials (e.g. scaffolding timbers, wedges, underlays, sealing material, lubricants, etc.).

c) Provision of heating, lighting, operating power, water, compressed air, including the necessary connections.

- d) Provision of necessary dry and lockable rooms for the storage of the Personnel's tools.
- e) Transport of parts at the assembly site, protection of the assembly site and materials against harmful influences of any kind, cleaning of the assembly site.
- f) Provision of suitable theft-proof recreation rooms and work rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the Personnel.
- g) Provision of materials and performance of all other actions necessary for the adjustment and/or testing of the object of performance.

The customer's technical assistance must ensure that the Services can be started immediately after the arrival of the Personnel and carried out without delay until acceptance by the Client.

If the customer does not fulfil his obligations, MULTIVAC is, after a reasonable period of notice has expired, entitled, but not obliged, to carry out the actions incumbent on the customer in his place and at his expense. Further legal rights and claims of MULTIVAC remain unaffected.

## **8. Acceptance**

The customer is obliged to accept the Services as soon as he has been notified of their completion and any contractually stipulated testing has taken place. If the Services prove not to be in accordance with the contract, MULTIVAC has to remedy the defect at its own expense. This does not apply if the defect is due to a circumstance attributable to the customer. If there is a non-essential defect, the customer cannot refuse acceptance if MULTIVAC expressly acknowledges the obligation to remedy the defect.

If the service has been completed and the Client delays or refuses acceptance without indicating at least one defect, the service shall be deemed to have been accepted after two weeks have elapsed since notification of completion of the services. The notification of completion shall be deemed to be a request for acceptance.

With the acceptance, MULTIVAC's liability for recognisable defects ceases, unless the customer has reserved the right to assert a specific defect.

## **9. Spare Parts**

If a part supplied by MULTIVAC is damaged during the performance of the Services through the fault of MULTIVAC, MULTIVAC must at its own discretion either repair it or supply a new part at its own expense.

## **10. Warranty**

The unsuccessful performance of Services is not regarded deficient if MULTIVAC, despite proper and professional performance of the Services, cannot find the cause of the defect leading to MULTIVAC's commission and/or Services cannot be performed because spare parts are not available or cannot be procured by MULTIVAC, provided that the aforementioned circumstances were not recognisable to MULTIVAC when the order was accepted. This does not apply if the non-detection of the cause and/or the inability to procure necessary spare parts is due to gross negligence, intent or a culpable breach of essential contractual obligations by MULTIVAC, MULTIVAC's executives or vicarious agents.

The warranty period starts with acceptance of the service and is one year, unless a quality guarantee has been given or in case of malice (*Arglist*).

## **11. Liability**

Claims for damages and reimbursement of expenses (hereinafter referred to as "Claims for Damages") against MULTIVAC, MULTIVAC's executives or vicarious agents, irrespective of the legal grounds, in particular due to breach of duties arising from a contractual obligation and from unlawful acts, are limited in accordance with the following regulations:

MULTIVAC is not liable in case of simple negligence of its executives or vicarious agents, unless it is a violation of essential contractual obligations. The essential contractual obligation regarding contracts for works and services (*Werkverträge*) consists of the delivery or production of a defect-free contractual object and, if applicable, its transfer of ownership to the customer. The essential contractual obligation regarding service contracts (*Dienstverträge*) is the provision of the service requested by the customer.

If MULTIVAC is liable in principle, the claim for damages is limited to the foreseeable damage typical for the contract. Indirect damages and consequential damages are only to be compensated if they are typically to be expected with the intended use of the object in question.

The above exclusions and limitations of liability apply to the same extent in favour of MULTIVAC's executives and vicarious agents.

The limitations of this Clause 11 do not apply to the liability of MULTIVAC or its executives and vicarious agents in case of intent, gross negligence of the organs or executives of MULTIVAC, culpable injury to life, body, health; defects which have been fraudulently concealed or the absence of which has been guaranteed by MULTIVAC and, in case of defects of a delivery item, if and to the extent that liability for personal injury or property damage is provided for under the Produkthaftungsgesetz (Product Liability Act).

The liability starts with acceptance of the service and is one year, unless a quality guarantee has been given or in case of malice (*Arglist*).

## **12. Data protection**

The supplier and the purchaser undertake to observe all applicable data protection regulations when processing personal data and to take the necessary technical and organisational measures to ensure data security.

## **13. Software use**

In those cases where software is included within the scope of delivery, a non-exclusive and non-transferable right is granted to the purchaser to use the supplied software and its documentation. It is ceded to the purchaser for use on the delivery item, for which it is intended. Use of the software on more than one system is prohibited.

The customer is not permitted, except for archiving purposes, to make copies of the software, to modify or decompile the software or to use a form of reverse engineering. The supplier shall provide the information required for interoperability on request. The purchaser undertakes not to remove manufacturer information - in particular copyright notices - or to change it without the prior express consent of the supplier.

All other rights to the software and documentation, including copies of these, remain with the supplier or software provider.

## **13. Confidentiality**

1. Notwithstanding the overriding provisions of any separately concluded confidentiality agreement, if any, the following shall apply: The purchaser is obliged to treat as confidential supplier's trade secrets which it learns during the initiation, conclusion or performance of the contract and not to disclose them to third parties. The supplier shall identify trade secrets by marking the respective information as "Confidential" (or similar designations). Even without such labelling, the purchaser shall maintain confidentiality if the circumstances indicate that the respective information constitutes a trade secret for the supplier. Trade secrets of the supplier are in particular the offer and any documents thereto as well as prototypes (and the like, Section I. 2 thereto); contractual systems or machines for series production at purchaser's premises together with the associated documentation are trade secrets of the supplier until delivery at purchaser's site. Notwithstanding the aforesaid, the provisions of Section IX shall apply to any (co-) supplied software together with its documentation.

2. Confidential information, as defined by this clause, does not include information that

- a. was generally known to the purchaser at the time of transmission or has subsequently become so without any breach by the purchaser;
- b. was already known by the purchaser at the time of transmission or were developed by the purchaser themselves without the use of confidential information or
- c. has been made available to the purchaser by third parties without any breach of law.

3. The purchaser shall not be in breach of any confidentiality obligations if it discloses a trade secret of the supplier to the extent that it is required to do so by an order of a court or an authority or by a statutory regulation, whereby the purchaser must take all reasonable steps to prevent or limit the disclosure as far as possible. To the extent legally permissible, the purchaser is obliged to notify the supplier immediately about such disclosure.

4. Furthermore, the use or disclosure of trade secrets within § 5 GeschGehG does not constitute a breach of the obligation to maintain secrecy.

5. If the purchaser breaches its obligation to maintain secrecy, it shall owe a contractual penalty to be determined by the supplier at its reasonable discretion, the appropriateness of which shall be reviewed by the competent regional court in the event of a dispute, unless it is not responsible for the breach of duty.

#### **14. Force Majeure**

In case of an event Force Majeure, the affected contractual party shall not be liable on account of the delay or impossibility thus determined. The delivery time will be extended appropriately. Events of Force Majeure shall include but are not limited to (i) war (whether declared or undeclared), hostilities, military uprising, insurrection, act of public enemy, extensive military mobilization, riot; (ii) civil war, rebellion and revolution, military or usurped power, coup, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) regulations and/or orders of whatsoever nature of any governmental authority, or compliance with such acts, laws rules, regulations, expropriation, seizure of works, requisition or nationalization; (v) plague, epidemic, pandemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; (vii) general labour disturbances such as boycott, strike, lockout, go-slow, occupation of factories and premises; (viii) general lack in plant or raw materials, lack of harbour and offloading capacity, serious transport accidents and other reasons that a contractual party has no influence over.

#### **15. Applicable Law, Place Of Jurisdiction**

The law of the Federal Republic of Germany applies to these terms and conditions and the entire legal relationship between MULTIVAC and the customer, excluding the UN Convention on Contracts for the International Sale of Goods.

For all disputes arising from the contractual relationship, if the contractual partner is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction is Memmingen. MULTIVAC is also entitled to take legal action at the registered office of the client.